

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

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JERALD THOMAS #317932,

Plaintiff,

v.

Case No. 2:04-CV-251

UNKNOWN EBY,

HON. GORDON J. QUIST

Defendant.

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**ORDER ADOPTING REPORT AND RECOMMENDATION**

The Court has before it Plaintiff's objections to the Magistrate Judge's Report and Recommendation issued on 31 July 2008 in which the magistrate judge recommended that Defendant's motion for summary judgment be granted. The Court has conducted a de novo review of the report and recommendation pursuant to Fed. R. Civ. P. 72(b) and concludes that the report and recommendation should be adopted by the Court.

The Plaintiff alleges in his complaint that Defendant Eby fabricated a misconduct charge against him in retaliation for a previous grievance Plaintiff had filed on another corrections officer. Defendant moved for summary judgment. The magistrate judge recommended the Court grant Defendant's motion.

Plaintiff objects to the magistrate judge's recommendation that the Court grant summary judgment to Defendant on the grounds that Plaintiff has not offered evidence sufficient to raise a genuine issue of material fact supporting his claim that Defendant acted with intent to retaliate against Plaintiff. Plaintiff asserts that Defendant's description of the incident in response to Plaintiff's step I grievance is inconsistent with her description of the incident in the misconduct

report. In the misconduct report Defendant stated that Plaintiff “was standing in the observation window with his penis exposed”, (docket no. 33-2, p. 2), while in her response to Plaintiff’s step I grievance Defendant stated that Plaintiff was standing naked in the center of his cell with his penis in his hand. (Docket no. 33-2, p. 5.) Plaintiff asserts that “[d]efendant’s . . . contradictory statements” prove she acted with retaliatory intent. (Docket no. 38, p. 2.) The Court finds that these descriptions are materially consistent and that Plaintiff has not produced evidence sufficient to survive Defendant’s motion for summary judgment. A mere “scintilla of evidence in support of the plaintiff’s position” is insufficient. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986).

Therefore,

**IT IS HEREBY ORDERED** that the Magistrate Judge’s Report and Recommendation issued 31 July 2008 (docket no. 37) is **APPROVED AND ADOPTED** as the Opinion of this Court.

**IT IS FURTHER ORDERED** that Defendant’s motion for summary judgment (docket no. 28) is **GRANTED**.

This case is **concluded**.

Dated: September 18, 2008

/s/ Gordon J. Quist  
GORDON J. QUIST  
UNITED STATES DISTRICT JUDGE